Travelways, Inc. *and* General Drivers, Warehousemen and Helpers Local Union 28, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 11-CA-9956 and 11-CA-10016

30 September 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 12 January 1983 Administrative Law Judge Leonard N. Cohen issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be dismissed with respect to the allegations that Respondent unlawfully discharged its employees Russell Hawkins and William Putnam.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In the absence of exceptions thereto, the Board adopts, *pro forma*, the Administrative Law Judge's determinations that the Respondent violated Sec. 8(a)(1) and (5) of the Act.

With regard to the finding of a violation of Sec. 8(a)(5) of the Act, we find it unnecessary to pass on *Jerr-Dan Corp.*, 237 NLRB 302 (1978), since we find that decision to be inapposite to the case here.

Member Zimmerman agrees with the Administrative Law Judge that "this case falls squarely under the Board's rationale of *Jerr-Dan Corp.*" He notes that his colleagues state no basis for finding that decision "inapposite to the case here," and he can find none. He therefore finds that the Administrative Law Judge correctly ruled that the Respondent violated Sec. 8(a)(5) of the Act by refusing to honor its commitment to recognize the Union, a matter as to which no party has filed exceptions.

DECISION

STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge: This matter was heard before me on June 7 and 8, 1982, in Greer and Greenville, South Carolina, respectively, pursuant to a consolidated complaint issued on September 16, 1981,[1] by the Acting Regional Director for Region 11 of the National Labor Relations Board. The consolidated complaint which is based on charges filed by the Union on June 19 and July 29, alleges that Travelways, Inc. (herein called Respondent), violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended. Respondent timely filed an answer in which it denies the commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs which were filed by the General Counsel and Respondent have been carefully considered.

Upon the entire record of the case, and my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Respondent is a South Carolina corporation with office and principal place of business in Greenville, South Carolina, where it is engaged in the furnishing of interstate bus transportation services. During the past 12 months, which period is representative of all times material herein, Respondent, in the course and conduct of its business, received gross revenues in excess of $50,000 from its operation as an interstate carrier. Accordingly, Respondent admits, and I find and conclude, that at all times material herein it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

Respondent admits and I find that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that Respondent violated the Act by three separate, though interrelated, categories of conduct. First, that Respondent's owner, Jack Pharr, when faced with the claim that the Union represented a majority of his bus drivers and mechanics, agreed to personally inspect the authorization cards and, as a result of that inspection, voluntarily agreed to recognize and bargain with the Union. Shortly thereafter, Pharr reneged on this agreement and has at all times since refused to bargain with the Union in violation of Section 8(a)(5). In the alternative, the General Counsel contends that in any event Respondent's subsequent unfair labor practices in

[1] Unless otherwise specified all dates refer to 1981.

violation of Section 8(a)(1) and (3) are of such a nature as to warrant the issuance of a bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

The second category involves various statements made by Pharr and Respondent's then general manager, Melvin Hawkins, to employees which the General Counsel contends constitute separate and independent violations of Section 8(a)(1). These statements range from simple interrogations to threats to close the facility.

The third and final category involves the alleged unlawful discharges in violation of Section 8(a)(1) and (3) of bus drivers Russell Hawkins and William Putnam.

For the sake of clarity these matters will be dealt with separately in the order set forth above.

A. *Refusal to Bargain*

In late April, three of Respondent's bus drivers went to the union hall where they met with James Phillips, business agent. Phillips, after first explaining the use of authorization cards, gave the three blank cards and instructed them to have all the interested employees sign them. A few days later, nine authorization cards bearing the signature dates of April 27 or 28 were returned to Phillips' office.[2]

By letter dated April 29, Phillips wrote to Pharr at Respondent's Greenville, South Carolina, office[3] and notified him that the Union represented a majority of Respondent's drivers and mechanics, and demanded immediate recognition. Further, the letter stated "we will demonstrate to you the drivers' signed authorization cards at your convenience."[4] When Melvin Hawkins, Respondent's general manager, received the letter, he telephoned Pharr and informed him of the Union's claim. Pharr instructed Hawkins to set up a meeting with the Union for Monday, May 4. Hawkins did so, and on that day Pharr and Melvin Hawkins met with Phillips and Morris Stepp, the union president, at Respondent's office.[5]

After introductions,[6] Pharr asked Phillips and Stepp what kind of problems his people had. Phillips responded that they had not yet met with the men, but that they could do so, work up a proposal, and then meet with him at a later date to negotiate a contract. Phillips then stated that the Union had signed authorization cards from Pharr's employees. Pharr asked to see them, but Phillips answered that he would prefer that a third party, such as a priest or minister, verify the cards. When Pharr again asked to see the cards, Phillips in turn asked him if he (Pharr) would be able to verify the employees' signatures. After Pharr said that he could, Pharr handed him the cards.[7] Pharr then proceeded to look at each card and call out the employee's name. With the exceptions noted below, each time Pharr would read a name, Phillips would ask him if the individual was in fact an employee, and Pharr would respond that he was. When they came to the name of Juan Faneytte. Pharr stated that he was a supervisor. Stepp answered that they could work out that problem during negotiations. When they came to the card of William Putnam, Pharr noted that the name was printed rather than signed. Again Stepp answered that that presented no problem.

At some point during the inspection of the cards, Pharr stated one of the employees who signed a card was going to be fired. When Phillips stated that he hoped that it had nothing to do with signing of a card, Pharr responded that it was due to a previous incident. Phillips then asked the identity of this employee, and Pharr indicated that it was Russell Hawkins, the brother of his general manager.[8]

After the review of the cards, the subject turned to establishing a date for a negotiating meeting. Pharr indicated that he was going to be out of town, but that he would be back on May 25, and available to meet with the Union on May 26. Phillips stated that he would not be in town then but that Stepp could handle the matters for the Union. When Pharr asked if he could bring his attorney, Phillip answered that the Union certainly did

---

[2] On the first day of the hearing, Phillips testified that he originally received back only eight signed authorization cards. On the second day of the hearing, Phillips was recalled by the General Counsel, and at this time he corrected his testimony to reflect that he received nine, not eight, signed authorization cards in late April. In explaining this change, Phillips stated that he had, as of April, all the signed cards bearing the date of either April 27 or 28, and that since there were nine such cards then in the possession of the General Counsel, he was obviously mistaken in his earlier testimony. Phillips impressed me with both his demeanor on the witness stand and the clarity of his testimony regarding conversations. Moreover, his corrected testimony is supported, if not corroborated, by the testimony of various employee witnesses who testified to the circumstances surrounding the signing of the cards in question. In view of the above, and in the absence of any reliable evidence to the contrary, I credit Phillips' testimony that, as of the end of April, he had in his possession nine signed authorization cards.

[3] Pharr lives in Charlotte, North Carolina, where he owns and operates a travel agency. During the spring of 1981, he visited the Greenville, South Carolina, facility periodically on an irregular basis.

[4] Shortly thereafter, the Union filed a petition for an election in Case 11-RC-5000.

[5] Pharr testified that he did not remember seeing Phillips' April 29 demand letter at that time. According to Pharr, he was merely informed that the Union wanted to meet with him to talk.

[6] The following account is based on a composite or amalgam of the credited and corroborated testimony of Phillips and Stepp. As noted above, Phillips displayed a keen memory and appeared honest and candid throughout. While Stepp was just slightly less secure in his ability to recall the facts, he nonetheless impressed me as candid and straightforward. When Hawkins' and Pharr's testimony is in conflict with that of Phillips' and Stepp's on any material point, it will specifically be noted.

[7] I do not credit that portion of Melvin Hawkins' testimony in which he stated that Phillips allegedly told Pharr that if he looked at the cards, he would be recognizing the Union as the bargaining representative, and that Pharr specifically and readily agreed to that procedure. Melvin Hawkins was not an impressive witness. As the brother of alleged discriminatee, Russell Hawkins, and as a current part owner in a bus company in direct competition to Respondent, he held an obvious bias against Pharr. On the other hand, Phillips, while noting that Pharr gave every indication that he was agreeing at this meeting to negotiate with the Union, credibly admitted that Pharr never specifically said he was recognizing the Union as the bargaining representative. Phillips' testimony indicated that Pharr was never asked the direct question regarding recognition and that he did not specifically mention it on his own. On the first several occasions Stepp was questioned on the subject, his testimony fully corroborated that of Phillips. However, the final time that he was asked, Stepp answered that Pharr stated that they did specifically ask Pharr if he were recognizing the Union and that Pharr answered he would have to check with his attorney. I do not credit Stepp's final and uncorroborated version.

[8] Pharr testified that he stated that an investigation into Russell Hawkins' behavior was then underway, not that a final decision had already been reached.

not object to the Employer having an attorney at negotiations.[9]

By letter dated May 6, Phillips informed the Acting Regional Director for Region 11 that the Union wished to withdraw the petition filed just a few days earlier. In this letter Phillips stated:

> Morris Stepp and myself met with the company on May 4, 1981, and the owner, Mr. Jack Pharr, examined the authorization cards presented to him by myself and further stated that the names on the cards represented employees who worked for his Company. It is the position of the Local Union that this Company has recognized us as the bargaining representatives. Mr. Pharr intends to contact the Local Union for further meetings and negotiations.

The meeting previously scheduled for May 26 did not take place. Although it is unclear, it appears that Stepp, the individual who would be handling the matters for the Union, was waiting to be contacted by Pharr upon the latter's return to Greenville. Phillips, upon his own return to town during June, on several occasions, attempted to contact Pharr by telephone. These attempts were unsuccessful and, despite leaving messages with Pharr's secretary, his calls were not returned. On July 2, Phillips sent a letter to Pharr requesting a meeting for the purpose of negotiating a contract. Phillips indicated in the letter that, if he did not receive a response, he would file charges with the National Labor Relations Board. On July 10, Phillips and Pharr had a telephone conversation and mutually agreed to meet on July 1. On that date, Phillips and Stepp went to the Greenville office, however, Pharr did not appear.

By letter dated July 29, Pharr sent the following letter to Phillips:

> This will acknowledge your request for recognition of your Union as bargaining agent for the drivers of Travelways, Inc. Please be advised that we prefer that our employees have a free choice by a secret ballot in accepting or rejecting your Union as bargaining agent and we must respectfully decline your request for recognition.

Conclusions

Before analyzing the legal significance of Respondent's actions during the meeting with the Union on May 4, it is necessary to first determine whether the Union, as of that date, represented a majority of employees in an appropriate bargaining unit.

I shall deal first with the issue of the appropriate unit. The parties in a post-hearing submission stipulated that, as of May 4, 16 individuals were employed as full-time and/or regular part-time drivers and/or mechanics, and, therefore, should be included in any unit found appropriate.[10] The parties were not, however, able to agree on the unit placement of two individuals, Melvin Hawkins, the then general manager, and Lynn Styles, the clerical employee. The General Counsel contends that Hawkins, as a supervisor, and Styles, as an office clerical employee, should be excluded from the unit. Respondent, on the other hand, contends that since Hawkins spent a "good portion" of his time performing identical duties to those performed by the other drivers and mechanics, and that since Styles was a plant rather than an office clerical employee, both should be included in any unit found appropriate.

Little time need to be spent with regard to the question of Melvin Hawkin's unit placement. The uncontroverted evidence establishes that for several years prior to May 1981, Hawkins held the title of general manager. In that capacity, Hawkins possessed and exercised the authority to, on his own, hire, fire, discipline, and direct the work force of some 17 employees. No citation is necessary to support the obvious conclusion that Melvin Hawkins was at the time he held the position of general manager on May 4, 1981, a statutory supervisor within the meaning of Section 2(11) of the Act.

A more serious question arises in the case of Styles, the only clerical employee employed by Respondent. Styles, who works in the office of the building which also serves as the garage and/or terminal, informs drivers in person and/or by telephone of their work assignments, receives their reports and logs, checks their expense accounts, prepares deposits, reimburses the drivers for their expenses, and dispatches them. In performing these duties, she has frequent contact within each working day with the other employees.

Based on the rather sparse record before me, it appears that Styles' duties are more akin to those of a plant clerical employee, rather than an office clerical employee of the type who would traditionally be excluded from a unit composed of bus drivers and mechanics. In this regard, she appears to share a close community of interest with Respondnet's other employees. Moreover, to exclude her from the unit would effectively deny her any representation since the Board does not certify bargaining units for only one employee.[11] Accordingly, Styles should be included in the unit.

Styles' inclusion brings the employee complement, as of May 4, to 17. As set forth above, as of that time the Union possessed, and turned over to Respondent for its inspection, cards from 9 of those 17, the minimum number needed to constitute a majority. While Respondent, neither at hearing nor on brief, fully explicated its position with regard to the validity of these cards, it appears that it seeks to invalidate one or more of the cards on the grounds of supervisory taint. In this regard, the uncontroverted evidence establishes that General Manager Melvin Hawkins was in the area of the office when five employees, including mechanic Juan Faneytte,

[9] Pharr's account of this meeting was sketchy, lacking in detail, and incomplete. Pharr did testify that he agreed to meet with the Union on May 26. Significantly, Pharr offered no testimony whatsoever as to proposed purpose of the second meeting. At no point in his testimony did Pharr deny discussing possible negotiations with the Union.

[10] Of the 16 stipulated to be bargaining unit employees, the following 9 signed cards on either April 27 or 28: Frankie Phillips, Frank Harris, Johnny Chapman, James Sullivan, Juan Faneytte, William Strickland, James Allen, William Putnam, and Russell Hawkins.

[11] *Luckenbach Steamship Co.*, 2 NLRB 181, 193 (1936).

signed their cards. According to Hawkins' account, when employees asked him how he felt, he simply told them:

> Its not up to me; its entirely up to the individual if you want to sign them fine, it you don't, that's fine too, but I can't get involved in it. I'm a supervisor and I can't get involved in and I am not going to get involved in it.

The only evidence offered by Respondent to even suggest Hawkins' involvement in the card signing exceeded the above-recited passage is the testimony of Juan Faneytte. Faneytte, an employee of Hispanic descent, testified that at the time he admittedly signed the union authorization card, he could not read English. Faneytte stated that prior to his signing the card, employees Johnny Chapman and Melvin Hawkins explained to him that the Union would help employees in dealing with the Employer in working out their problems. Additionally, Faneytte stated that either Chapman or Hawkins filled in the personal information blanks on his card from information he supplied.

Even fully crediting Faneytte's somewhat suspect testimony regarding Hawkins' involvement in the signing of his authorization card, I, nonetheless, reject Respondent's contention that this conduct in any way taints the finding of the Union's majority status.

As the Board stated in *El Rancho Market*, 235 NLRB 468, 473–474 (1978):

> This Board has long recognized that a supervisor's involvement in organizational activities will taint a union's card majority only where the supervisor's participation may be said to have deprived employees of the opportunity to exercise free choice in selecting a collective-bargaining representative.[29] In explicating this principle, we have pointed out that at a minimum it must be affirmatively established either that the supervisor's activity was such to have implied to employees that their employer favored the union or that there is cause for believing that employees were coercively induced to sign authorization cards because of fear of supervisory retaliation.[30]

[29] See *Juniata Packing Company*, 192 NLRB 934 (1970).
[30] See *Orlando Paper Co., Inc.*, 197 NLRB 380 (1972).

Faneytte's testimony simply does not establish that Hawkins implied to him that Respondent favored the Union or that he was coercively induced to sign the card because of fear of Hawkins' retaliation. Moreover, no evidence was presented that Faneytte, due to any language difficulties, was in any way misled as to the purpose of the card or that he did not have an opportunity to understand the nature of what he was signing. On the contrary, the evidence indicates that Faneytte was fluent enough in English to fully comprehend the meaning of signing an authorization card.[12]

[12] *Sans Souci Restaurant*, 235 NLRB 604, 608 (1978).

To summarize the above findings and conclusions, the Union, by letter dated April 29, informed Respondent that it represented a majority of Respondent's drivers and mechanics and offered to demonstrate this fact to Respondent through presentation of signed authorization cards. Less than a week later, at a meeting with the Union, Respondent's president, Pharr, inspected the authorization cards signed by a majority of his employees in an appropriate unit and agreed to meet with the Union in 3 weeks' time to negotiate a contract. At no time during the meeting did Pharr ever question the Union's claim of majority status in an appropriate unit. While Pharr never specifically stated that he was recognizing the Union as the exclusive bargaining representative of his employees, his commitment to enter negotiations with the Union constituted an explicit recognition of the Union's majority status. Thus, this case falls squarely under the Board's rationale of *Jerr-Dan Corp.*, 237 NLRB 302, 303 (1978). There, the Board, in a factual setting strikingly similar to that present here, stated:

> Rather, the key is the original commitment of the employer to bargain upon some demonstrable showing of majority. That showing was made here by the Union and that commitment was made by Respondent when it agreed to begin bargaining. Once that commitment was made, Respondent could not unilaterally withdraw its recognition and to do so was a violation of the Act.

Accordingly, I find that Respondent's withdrawal of recognition from the Union was in violation of Section 8(a)(5) and (1) of the Act. In view of this conclusion, I need not treat the General Counsel's alternative argument that a bargaining order should issue under *Gissel*.

B. *The Independent 8(a)(1) Violations*

1. Interrogations

Employees Johnny Chapman, Frank Harris, and Don McIntyre each testified that sometime after May 4, Pharr spoke to them individually in his office about the Union.[13] According to each's credited account, Pharr asked them if they had signed union authorization cards.

Pharr, while denying that he spoke to any of the employees about the Union prior to his meeting on May 4, admitted asking Harris if he signed a union card shortly after the meeting. When asked why he would ask Harris a question to which he already knew the answer, Pharr stated simply, "I was kidding with him." Pharr could not recall speaking to any other employee about the Union.

[13] Chapman testified that the conversation occurred about a week after he signed his card on April 27, while Harris testified that it occurred about a week to a week and a half after he signed his card, also on April 27. Although McIntyre stated that his conversation occurred in late April, it is clear from the full reading of his testimony that it actually occurred about the time he signed his authorization card in mid-May.

Although the record is somewhat unclear, it does not appear that Pharr was at the Greenville facility between April 29, the date the Union wrote the demand letter, and May 4, the date of his meeting with the Union.

Conclusions

I credit the mutally corroborative testimony of Harris, Chapman, and McIntyre over the partial and unconvincing denial advanced by Pharr. The interrogations which took place had no legitimate purpose and were not accompanied by any assurance against reprisals and, as such, violated Section 8(a)(1) of the Act, even if such discussions took place in a "friendly atmosphere" where the supervisor and employee enjoyed a close and amiable relationship.[14] Accordingly, I find that Respondent violated the Act in this regard as alleged.

2. Threat of plant closure

Don McIntyre testified that in February 1982, he and his wife met with Pharr at a local McDonald's restaurant to discuss Respondent's possible renting of a trailer at the Knoxville World Fair that summer. During their lunch, Pharr told him that "if the Union came through he was undecided whether or not he would either close up his Greenville operation or move to Charlotte or just close it up." At the time of the conversation the original unfair labor practice hearing was scheduled to be heard on April 29.

Pharr recalled having lunch with the McIntyre's on the occasion in question; however, he did not recall anything being said during this conversation about the Union.

Conclusions

I find McIntyre's account of the above conversation more reliable than Pharr's. Statements made by an employer's owner of intent to close or move a facility if the employees successfully organized clearly constitute an unlawful threat of economic retaliation in violation of Section 8(a)(1).[15] Accordingly, I find that Respondent violated the Act in this regard as alleged.

3. Threat of discharge

As will be set forth in some detail *infra*, on May 5, Pharr informed Melvin Hawkins that he (Pharr) was going to discharge Russell Hawkins, Melvin's brother, for missing trips, failing to call in, and for being placed in an alcoholic detoxification center. Melvin Hawkins asked for, and was granted permission by Pharr, to personally inform his brother of the discharge. According to both Melvin Hawkins and Russell Hawkins, during the subsequent conversation between the two, Melvin Hawkins told his brother that the real reason for the discharge may actually have been Russell's signing of a union card.

Conclusions

In making the statement in question, Melvin Hawkins was clearly expressing a personal, if incorrect, evaluation of the situation. Additionally, a quite probable explanation for his making the remark may well have been a desire on his part to soften the blow to his brother. Melvin Hawkins was no doubt sensitive enough to realize that Russell would be able to face his discharge in a more positive light if he believed it was caused by his union activity, rather than any serious problems he may have had with alcohol abuse. In any event, neither Melvin Hawkins' motive in making the statement nor his family relationship with Russell Hawkins excuses Respondent from liability for the conduct of the statutory supervisor. The law is well settled that neither the subjective intent of the speaker nor his relationship with the employee is relevant, that the legality of the statement will be judged solely by an objective standard of whether the supervisor's conduct reasonably tended to interfere with employees' rights.[16] Further, a supervisor's prefacing his otherwise unlawful remarks with a statement that he is merely expressing his personal feelings does not remove the conduct from the Act's prescription.[17] Here, the statement by a statutory supervisor to an employee to the effect that his union activity caused his discharge has, by necessity, a coercive and, therefore, unlawful effect on the employee. Accordingly, I find this 8(a)(1) allegation as alleged.

4. Interference with Board proceedings

Employee Frankie Phillips testified that in late April 1982, on the day the original unfair labor practice trial was scheduled to be heard, Pharr had a conversation with him in his office about subpoenas.[18] According to Phillips, Pharr asked him if he had received a subpoena. When Phillips answered that he had, Pharr stated that two or three of the other drivers had consulted an attorney and were told that since the subpoenas did not have the name of a judge on them, the employees did not have to honor them.

By way of defense, Respondent offered the testimony of John Whitted, who since January 1982 has held the position of Respondent's manager trainee. According to Whitted, in late June 1982, he overheard Phillips while in the office repeating what Pharr had allegedly told him about subpoenas. Whitted took Phillips into his office and told him that he did not believe Pharr had said what Phillips attributed to him. At this point, Whitted called Pharr on the telephone and, according to both Pharr and Whitted, informed Pharr of what had transpired. Pharr then spoke directly to Phillips on the telephone and denied ever telling him that he (Phillips) did not have to comply with the Board's subpoenas. Phillips answered Pharr by stating that he must have dreamed up the earlier conversation. Phillips was not recalled to testify regarding this late June conversation with Whitted and Pharr.

Conclusions

I found Phillips' testimony regarding what he was told by Pharr in late April 1982 regarding subpoenas as more credible than Pharr's general denial. I find nothing in

[14] *Erie Technological Products*, 218 NLRB 878 (1975); *Mayfield's Dairy Farms*, 225 NLRB 1017 (1976).

[15] *Tra-Mar Communications*, 265 NLRB 664 at fn. 5 (1982).

[16] *Coca-Cola Bottling Co.*, 250 NLRB 1341 (1980).

[17] *Herbst Supply Co.*, 222 NLRB 448, 451 (1976).

[18] By Board Order issued April 28, 1982, the Acting Regional Director postponed indefinitely the hearing originally set for the following day.

Phillips' subsequent conversation of late June with Pharr and Whitted as casting doubt over the reliability of his earlier description of his conversation with Pharr. Moreover, Phillips was still employed by Respondent at the time he gave testimony which was adverse to the interests of Respondent. In these circumstances, it is unlikely that his testimony would be false.[19]

Pharr's advising Phillips that he did not have to comply with a valid Board's subpoena tended to impede the Board in the exercise of its power to compel the attendance of a witness in its proceedings, and further tended to deprive employees of vindication of their rights through the participation of witnesses in a Board proceeding. *Bob Motors*, 241 NLRB 1236 (1979). Accordingly, I conclude that Respondent has violated Section 8(a)(1) of the Act in this respect.

5. Other misconduct by Pharr

The General Counsel, at hearing, introduced evidence which, while not constituting independent violations of the Act, allegedly demonstrated Pharr's deep-seated animus against his employees' union activities, and, therefore, supports both the 8(a)(3) and 8(a)(5) complaint allegations.

First, Melvin Hawkins testified that a few days after the May 4 meeting, Pharr informed him that he (Pharr) had had a meeting with his attorney and that they might have a way around the Union by converting the drivers to independent contractors. Pharr asked Hawkins if he would be interested in this type of proposal, and Hawkins responded that he would consider it. Second, Melvin Hawkins testified that on or about May 12, he met with Pharr at the Company's office, where Pharr informed him that as of that point in time he was being put back as a full-time driver. Pharr explained that the move was on a temporary basis and would last only until the union "ordeal" was over. Pharr further stated that if it came down to a vote, Hawkins, as a member of the unit, could vote no in the election. Hawkins asked Pharr if he would eventually be put back in the office, and Pharr answered that he would at a later date. Pharr offered no evidence regarding either of these points. I, therefore, credit Hawkins' uncontroverted account which undeniably establishes strong union animus on the part of Pharr.

C. *The Discharges*

1. The discharge of Russell Hawkins[20]

The events leading up to Russell Hawkins' discharge began on the morning of April 22 when Pharr phoned Melvin Hawkins from Charlotte, North Carolina, to check on the status of Respondent's operations. During the course of their telephone conversation, Pharr inquired if everything had gone all right with the 2-day, two-driver charter for Wofford College scheduled to leave that day at 9 a.m. Hawkins told Pharr that he had replaced one of the assigned drivers, Russell Hawkins, with a newly hired driver named Jerry Littlefield. When Pharr asked why the change had been made, Melvin Hawkins explained his brother, Russell, had been trying to clear up some domestic problems and had gone to West Virginia with his wife.[21]

Later that same day, Pharr drove to Greenville and was in the office in the early evening by himself when he received a phone call from an unidentified man. The caller asked Pharr when someone was coming down to the Greenville County Detoxification Center to get Russell Hawkins out. Pharr answered that he did not know anything about it. Pharr stayed at Respondent's office approximately another hour before he left to drive to Columbia, South Carolina.[22]

A few days later, Pharr was back in the Greenville office and discussed Russell Hawkins' situation with his brother Melvin. According to Pharr, Melvin Hawkins told him that Russell had been under the influence of alcohol and was not able to go out on a trip and that he,

[19] See *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), modified on other grounds 308 F.2d 89 (5th Cir. 1962).

[20] Except where specifically noted, the above recitation is based on Jack Pharr's account of the facts. In crediting this account, I am not, of course, unmindful that in other portions of this Decision I have not credited his testimony. In those earlier situations, Pharr's rather vague testimony was directly contradicted by the testimony of various witnesses who impressed me, for one reason or another, as more reliable than was Pharr. That is not the situation here where the only other testimony regarding this allegation is the testimony of Melvin Hawkins and to a lesser extent the testimony of Russell Hawkins himself. In many respects, their testimony corroborates rather than contradicts Pharr. While Pharr's testimony on the events leading up to Russell Hawkins' discharge are at times vague and confusing as to time sequences, it is, nonetheless, a bulwark of clarity when compared to the testimony of Melvin Hawkins.

[21] While Melvin Hawkins recalled having a conversation with Pharr in which he told him that Russell had gone to West Virginia, he placed this conversation as occurring about a week prior to April 22. Both Russell and Melvin Hawkins testified that Russell had not been assigned to work on April 22. In support of this assertion, the General Counsel introduced a daily log for Russell Hawkins which indicated that he was "off duty" from April 15 to 28. Unfortunately, no testimony was offered as to when or by whom this document was prepared. Since both sides apparently agreed that Russell Hawkins did not actually drive, as distinguished from being assigned to drive during this 2-week period, the materiality of this document is in question.

In support of Pharr's testimony regarding the April 22 charter, Respondent introduced a document entitled "Charter Bus Request" which is normally filled in with charter information when a charter order is placed or assigned. The document in question shows that the penciled-in name of one of the two drivers assigned to the charter was erased, and in place thereof the name of Jerry Littlefield was added. A careful inspection of the documents indicates that the name replaced could have been the name of Russell Hawkins. No evidence was offered as to who actually prepared this particular document. Additionally, neither Littlefield nor Tom Strickland, the other drivers assigned to the charter, were called to see if either could shed any light on how or when the assignment or reassignment of this charter was made.

[22] The General Counsel disputes Pharr's testimony regarding this phone call on several grounds. First, she correctly points out that the center's records indicate that Russell Hawkins was admitted at 10 a.m. on April 22 and discharged at 3:30 p.m. that same afternoon, some 3 to 4 hours before the phone call in question. Second, she argues that the confidentiality procedures followed by the center would have prevented any unauthorized contact with an outsider.

In view of the uncontroverted evidence that Pharr became aware of Russell Hawkins' stay at the center, at least within a few days of April 22, the General Counsel's argument challenging Pharr's assertion of receiving a phone call from the center is puzzling. The General Counsel offers no theory to explain how Pharr could have found out about Russell Hawkins' stay at the center if not from the center itself. Further, Pharr's receiving the phone call from the center several hours after Russell Hawkins' release is more likely to be the result of a bureaucratic foulup by the center's staff rather than a failure on the part of Pharr's memory.

Melvin Hawkins, had, therefore, sent Littlefield in his place.

In an extremely confused account, Melvin Hawkins not only seems to corroborate Pharr's testimony, but appears to go beyond Pharr's by also admitting that Pharr, in late April, had already raised the question of discharging Russell Hawkins with him.

Under questioning by the General Counsel, Melvin Hawkins testified in the following manner:

> Q. Did you have a trip that you were supposed to send Russell on?
>
> A. To be honest with you, I don't remember. I really don't.
>
> Q. To your knowledge, did he miss a trip as a result of this detox incident?
>
> A. I don't think so, but I, it's hard to really say, you know, without going back and looking. That's been so long ago.
>
> Q. Now, prior to May 5, after the meeting with, or in the May 4, or May 5, meeting, prior to the May 4, conversation with Mr. Pharr, after the Union card check, did Mr. Pharr ever mention any intention to fire Russell Hawkins to you?
>
> A. Well, there had been intentions made to several drivers including Russell, yes mam.
>
> Q. What I mean as a result of the detox incident?
>
> A. Not to, as well as I remember, no. Now, Mr. Pharr did ask me point blank had Russell been in detox. He had found out somehow, but whether he had a call or not I have no idea. But he did ask me point blank had Russell been in detox, and I told him, "I'm going to tell you the truth, yes he has."
>
> Q. When was this in relation to the time that Russell was in the detox?
>
> A. As well as I remember, it was a week or so after Russell had been locked up in detox.
>
> A. And at that time, did he mention any intention to fire over being put in detox?
>
> A. At that point, he said that he was going to have to talk to Russell, and he might have to let him go. And I brought up the question myself "If I may ask, you know, why are you firing him now, why didn't you fire him then, you know, if that's your intentions."
>
> Q. You're talking about on May 4? You asked Mr. Pharr that?
>
> A. Yes.
>
> Q. (Judge Cohen) What did he say?
>
> A. He said that he had just found out about it just a day or two before that.
>
> Q. (Mrs Pate) But he had asked you about it a week before that.
>
> A. Approximately a week after Russell had been locked up in Detox he said he had received a phone call; he did tell me that, that one night in the office he had received a phone call and to the best of my recollection he never told me who—I mean, I didn't ask who, you know—but he said that he had received the phone call that Russell had been drunk and missed, you know, missed employment for being drunk and locked up on Detox.

Pharr testified that at some point around the time he had his May 4 meeting with the Union[23] he spoke to Lieutenant Rumler, an officer of the Greenville police department, regarding obtaining verification on Russell Hawkins' admittance to the Detoxification Center. On the advice of Lieutenant Rumler, Pharr called the center and inquired if it would admit Russell Hawkins.[24] According to Pharr, he was told that Russell Hawkins could not be admitted at that time since he had been in there just a short time before.[25]

On May 5, Pharr, who was still in Greenville, informed Melvin Hawkins that he was going to have to let Russell Hawkins go for missing trips, failing to call in, and for being locked up in the Detoxification Center. At this point, as noted above, Melvin Hawkins asked for, and was granted, permission to break the news to his brother. After Melvin Hawkins initially told his brother of Pharr's decision, Pharr entered Melvin Hawkins' office and repeated to Russell the reasons for which he was being discharged. During the course of the conversation, Russell Hawkins asked Pharr why he was being discharged then since he had made at least two trips since the April 22 charter. No evidence was offered as to what, if any, reply Pharr made to this question.

Pharr testified that in March 1981 he and Melvin Hawkins had talked to Russell Hawkins about Russell's failure to show up for work due to drinking. According to Pharr, both he and Melvin Hawkins warned Russell that the next time he failed to show up because of his drinking he would be discharged. Neither Melvin Hawkins nor Russell Hawkins offered any testimony about this prior warning.

Conclusions

The General Counsel contends that the asserted reasons for Russell Hawkins' discharge are pretextual in nature and that the real reason for the discharge was his signing of the union authorization card. In support of this theory, the General Counsel relies on several factors, including, (1) the timing of the discharge coming just 1 day after the card check established that Russell Hawkins had signed a card, (2) Respondent's demonstrated union animus as illustrated by its independent violations of Section 8(a)(1), as well as by Pharr's uncontroverted comments to Melvin Hawkins regarding his efforts to

[23] When asked to place the following conversation in relation to the May 4 meeting, Pharr answered simply, "Well, this is right along, that was before that."

[24] As noted above, both Pharr and Melvin Hawkins testified that late in April they discussed the fact that Russell Hawkins had been admitted to the Detoxification Center. In view of their mutual corroborative testimony, it is not clear why Pharr would have felt the need to verify with the center the fact that Russell Hawkins had indeed been admitted there. Two explanations appear likely, (1) that Phar contacted the center *before* he and Melvin Hawkins discussed the matter and (2) that both Pharr and Melvin Hawkins are mistaken in their recollection of their conversations. It would appear to serve no purpose to speculate further on this apparent inconsistency. In any event, I credit Pharr's account that he did, in fact, call the Detoxification Center on the advice of Lieutenant Rumler.

[25] As before, the General Counsel disputes the testimony that anyone with access to the center's records would violate a former patient's privacy by disclosing this confidential information to Pharr. As before, I choose to credit Pharr's account of what he was told by an unidentified employee of the center.

undermine the Union's majority status, and (3) the unusual circumstances surrounding Pharr's alleged investigation into Russell Hawkins' work-related behavior.

That Russell Hawkins engaged in union activities and that Pharr had knowledge of these activities at the time of Hawkins' discharge is admitted. It is only slightly less clear that within a very few days of this action, Pharr demonstrated a strong union animus which included not only a willingness on his part to consider converting the driver-employees into independent contractors, but also the actual temporary demotion of his general manager to a driver status in an effort to obtain a no-vote if an election were forthcoming. Notwithstanding these factors, an analysis of the entire record convinces me that even if Russell Hawkins' protected concerted conduct was a "motivating factor" in Pharr's decision to discharge him, Respondent has nonetheless demonstrated that the same action would have taken place even in the absence of protected conduct.[26] In reaching this conclusion, I start with reference to Pharr's testimony that just a month or two prior to the April 22 charter Russell Hawkins had missed work due to drinking and that on that occasion both Pharr and Melvin Hawkins warned Russell that he would be discharged if such behavior occurred again. Significantly, this testimony stands uncontroverted.

On the morning of April 22, Pharr, in a telephone conversation, was told by Melvin Hawkins that Russell Hawkins had been replaced on the charter runs so that he could go to West Virginia with his wife to straighten out some domestic problems. That same evening, while in Greenville, Pharr received a phone call from someone in the Greenville Detoxification Center informing him that Russell Hawkins was not in West Virginia as he had been told, but was, in fact, still in Greenville in an unfit physical state.

A few days after Pharr received this phone call, he confronted Melvin Hawkins about his brother's difficulties. While some real question exists as to exactly what was said between the two, it appears that at the very least Pharr mentioned to Melvin Hawkins that he might have to let Russell go.[27]

Shortly thereafter, Pharr contacted the Detoxification Center and confirmed what he had already been told, that Russell Hawkins had been admitted there within the last few weeks. What is not at all clear, however, is when this confirmation was made. Pharr could do no better than to indicate that it occurred around the same time as the May 4 meeting with the Union. While Pharr's statements about Russell Hawkins during the May 4 meeting are more consistent with the finding that he received confirmation from the Detoxification Center sometime between the conclusion of this meeting and his discussion the following morning with Melvin Hawkins, a contrary finding would not compel the conclusion that Pharr's withholding the discharge until May 5 established its pretextual nature. In view of Pharr's late arrival to the facility on the morning of Monday, May 4, it is quite possible that Pharr simply had no opportunity to discuss the matter with Melvin Hawkins prior to the meeting.

> Determining the actual motive behind the dismissal of an employee is of course often an extremely difficult task, depending principally upon circumstantial evidence . . . and conduct.[28]

Here, the task is made especially difficult where the quality of the witnesses offered by each side left much to be desired. Much of the testimony of the principals lacked detail, specificity, consistency, and corroboration. As noted above, the General Counsel argues that the credible evidence demonstrates that the reasons offered by Pharr to justify Russell Hawkins' discharge, i.e., missing trips, failing to call in, and being placed in the detoxification center, are mere pretexts to mask his true motivation—ridding Respondent of a card signer.

> Actual motive, a state of mind, being the question, it is seldom that direct evidence will be available that it is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book. Nor is the trier of fact—here the trial examiner—required to be any more naif than a judge. If he finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal—an unlawful motive. . . .[29]

Here, the balance of the evidence convinces me that the General Counsel has not met her burden of persuasion. In reaching this conclusion, I have, as noted, relied heavily on that portion of the record which indicates that Russell Hawkins had been issued a warning for similar conduct less than 2 months prior to the incident on April 22, that Pharr had reason to believe that Russell Hawkins had missed a charter on April 22 because he had been intoxicated and placed in the detoxification center, and that Pharr had, prior to the union meeting on May 4, indicated to Melvin Hawkins that his brother, Russell Hawkins, might be terminated in the near future. These factors, as well as the extreme importance of having reliable and safe drivers available for charters, convince me that Pharr would have reached the same conclusion even in the absence of any protected conduct by Russell Hawkins. Accordingly, based on the record as a whole, it is concluded that the General Counsel has not established,

[26] *Wright Line*, 251 NLRB 1083 (1980). I reject the General Counsel's contention that the *Wright Line* analysis does not apply in alleged pretext cases. See *PPG Industries*, 265 NLRB 455 at fn. 2 (1982).

[27] That Pharr warned Melvin Hawkins on this occasion that Russell might be discharged is corroborated by subsequent events. It should be recalled that Melvin Hawkins apparently expressed no surprise during the May 4 meeting when Pharr told the union representatives that Russell Hawkins might have to be let go. The reason for the lack of surprise on the part of Melvin Hawkins seems clear. He had, by virtue of his earlier conversation with Pharr, already been informed of Pharr's intentions regarding his brother.

[28] *NLRB v. Hotel Tropicana*, 398 F.2d 430, 435 (9th Cir. 1968).

[29] *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 446, 470 (9th Cir. 1966).

by a preponderance of the evidence, that Respondent discharged Russell Hawkins because of his union activities.

2. The discharge of William Putnam

At or about 1 p.m. on June 9, Pharr, while personally running Respondent's operation, received a phone call from a church in nearby Anderson, South Carolina. The caller inquired regarding the price of a 12-day charter to the Grand Canyon to leave the following afternoon. Pharr calculated the cost of the trip and gave the information to the church officials who told Pharr that they would give him an answer by 4 p.m. that day.[30]

At some point shortly after 4 p.m., Pharr was notified by the church that Respondent had been given the charter. Pharr then consulted the out-of-work list or dispatch board maintained in the office. According to his testimony, he determined that the priority of the drivers on the list was as follows: Harris, Phillips, Putnam, and Strickland.[31] Since Pharr already knew that Phillips, second driver on the list, was not available for work that evening,[32] he assigned the charter to Putnam as the number two driver and Harris as the number three driver. At that time, Harris was working in the facility doing some painting. Pharr called him in and told him about the Grand Canyon charter. While explaining the schedule to him, Harris asked who was the second driver. Pharr answered that Putnam had been assigned to the trip, and Harris responded that that was fine. Harris then asked if Putnam could go all the way with him, and Pharr answered that that was up to Harris and Putnam. Harris then asked a question regarding splitting the trip, and Pharr answered that they could do whatever they wanted so long as it was legal. Harris then went home to pick up his clothes, and Pharr called Putnam, informed him of the trip, and instructed him to pick up Harris on his way to the terminal that evening.

Sometime between 9 and 10 o'clock that evening, Putnam and Harris arrived back at the terminal. According to Pharr, he explained the charter schedule, including the requirement that Harris, in the company of Putnam, drive that evening to Birmingham, Alabama, where Putnam would await the arrival of the bus while Harris would go on to Fort Smith, by either Greyhound or Trailways. Pharr further informed them that the entire pay for their share of the charter would be $900. When Harris, in the presence of Pharr, told Putnam that he would split the trip with him, Pharr commented that he did not have anything to do with that so long as they ran the trip legally.

Harris, in essence, corroborated Pharr's account. Harris testified simply that Pharr told the two of them that night that however he and Putnam worked out splitting the trip would be fine with him.

Putnam, on the other hand, had a slightly different recollection. According to Putnam, when Pharr told them that the trip only paid $900, he also stated that the drivers would have to "split the pay."[33] Pharr also told them that once they got to Birmingham, one driver could either go ahead by Greyhound or Trailways to Fort Smith, or could simply wait for the charter and ride illegally on that bus. Pharr added that they could do as they wished but that if they got caught running the trip illegally, it was their problem.

In any event, following this conversation, Putnam calculated that his share of the charter would come to less than $25 per day after expenses. When Putnam told Harris that he was not going to run the charter for that pay Harris attempted to dissuade him by offering him some of his own daily pay. Putnam still refused, and around 11 p.m. went to Pharr to inform him of his decision.

According to Putnam's account, he simply informed Pharr that he would not run the trip that would require him to both split the pay and run illegally. Putnam then stated that he would wait for the next trip, and Pharr answered all right.

In Pharr's account, Putnam told him that after paying taxes and expenses, he would not be netting enough money from the charter. Pharr answered that he was sorry but that he had to pay taxes also. Putnam then stated he was not going and that he would find himself something else to do. Pharr responded simply by saying okay.

Several days later, Putnam came back to the facility and spoke to Pharr. On that occasion, Pharr informed Putnam that Putnam had left him in a bind[34] and that he took Putnam's conduct on June 9 as indicating an intention to quit his employment and that is the way he

[30] In figuring the specific requirements of the church, Pharr calculated that three separate drivers would be needed. One driver was to pick up the charter at Anderson, South Carolina, at 2 p.m. on June 10, and drive the bus to Birmingham, Alabama, where he would be relieved by a second driver previously stationed there. The second driver would drive from Birmingham, Alabama, to Fort Smith, Arkansas, where he, in turn, would be relieved of the driving responsibilities by a third driver. The third driver, then accompanied by the second driver, would drive the bus to Amarillo, Texas. After spending the night in Amarillo, the schedule called for the second driver to drive from Amarillo, Texas, to Albuquerque, New Mexico. At that point, the second driver could remain with the charter, if he so chose, or return to South Carolina by another mode of transportation.

This schedule required that the drivers designated as drivers number two and three would be sent ahead of time to Birmingham, Alabama. There the second driver would await the arrival of the charter bus from Anderson, while the third driver would go on to Fort Smith, Arkansas, by either Greyhound or Trailways.

[31] Earlier that same day, about 3:30 p.m., Putnam returned from a trip and signed the dispatch report. Putnam testified that three drivers had their names on the board above his: Harris, Phillips, and Tom Strickland. Although the record is not entirely clear, it would appear, based on an inspection of Strickland's time records, that Putnam's recollection regarding his placement as fourth man on the list is correct.

[32] Earlier that day, Phillips had called Pharr and upon being informed that there was no work scheduled, asked for and was given permission to remove himself from the list so that he could pick up some odd-day work hauling cantaloupes.

[33] Putnam testified that while it was not unusual to "split trips" with drivers, it was both unusual and perhaps illegal to "split pay" with other drivers. Despite much argument at the hearing, neither the General Counsel nor Putnam, nor any other witness could explain or point out any practical difference between the phrases, "splitting trips" and "splitting pay." In any event, there was no showing that splitting pay in itself violated any DOT or ICC regulation.

[34] Pharr successfully secured a replacement driver for Putnam sometime after 11 p.m. on June 9.

would be treated. Putnam has received no work from Respondent since this incident.

The record discloses that several months prior to the June 9 incident, Putnam had refused a trip. On that occasion, Melvin Hawkins informed him that he was suspended or laid off for 2 weeks. In describing this prior incident, Putnam testified that he had no knowledge as of that time of any rules relating to the missing of trips. The record does not disclose whether Putnam missed any trips prior to this incident in early spring.

Melvin Hawkins testified that when he became general manager he and Pharr met and decided to establish a rule that if a driver refused to drive a trip he would be suspended for 2 weeks. They further allegedly decided that at that time that if a driver missed two trips he would be automatically discharged. Other than Hawkins' testimony, no other evidence was offered that any such rules or regulations relating to the missing of trips existed or was ever made known to any employee.

Pharr denied that Respondent had or maintained any rule regarding an employee's being suspended for missing a trip and, to his knowledge, no employee had never been so suspended. According to Pharr, if an employee missed a trip he considered the employee to be an automatic quit. Pharr was not asked, nor did he voluntarily attempt, to clarify the apparent inconsistency in his testimony regarding previous suspensions of both Russell Hawkins and Putnam.

Conclusions

The General Counsel contends that Putnam's discharge was pretextual in nature and that the incident of June 9 was simply seized upon by Respondent to mask its true and unlawful motive of ridding itself of a known union adherent. In addition to relying upon Respondent's well documented union animus, the General Counsel argues that Respondent placed more onerous conditions on Putnam by requiring him to work for approximately half of his normal pay and that when Putnam refused to work a trip on that basis, Respondent, in a disparate enforcement of its own rules, meted out a more severe form of punishment than otherwise called for.

Even viewing the facts in the light most favorable to the General Counsel, the record evidence simply does not support the conclusion urged by the General Counsel. First, there is simply no evidence that the payment method for this charter was in any way unusual or unprecedented. Moreover, there was no evidence that Putnam's assignment to the charter was anything other than an effort by Pharr to adequately staff a charter order that he had just received. Even if one were to assume that Respondent did in fact maintain the suspensions rules as testified to by Melvin Hawkins, that the rules were known to Putnam and other employees and that Putnam had only missed one trip prior to June 9, Respondent's "deviation" on this occasion from the terms of his own rules would be justified. Approximately 1 hour prior to the time that Putnam and Harris were scheduled to leave by car for Birmingham, Alabama, Putnam announced his refusal to accept the job. Putnam in no way based his refusal to accept the charter on other than his conclusion that the trip did not pay him enough money. This refusal clearly put Pharr in a difficult position of attempting, at the very last minute, to secure a replacement driver. That Pharr was able to do so does not lessen the seriousness of Putnam's conduct. Putnam gave Pharr a legitimate reason to discharge him and Pharr, not surprisingly, acted upon it.

Based on a careful review of the entire record, I am satisified that the General Counsel has not met the burden of establishing that Respondent, in discharging Putnam, was motivated by any unlawful considerations. Accordingly, I recommend that the allegations relating to Putnam's discharge be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I will recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act.

Having further found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union as the exclusive bargaining representative of its employees in an appropriate unit, I shall recommend that Respondent cease and desist therefrom and, upon request, bargain collectively with the Union as its employees' designated agent concerning their wages and other terms and conditions of employment.

Conclusions of Law

1. Respondent, Travelways, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Drivers, Warehousemen and Helpers Local Union 28, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All bus drivers, mechanics, maintenance employees, and clericals employed at Respondent's Greenville, South Carolina, terminal excluding all other employees, including guards, professional employees, and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since May 4, 1981, the above-named Union has been the exclusive representative of all employees within the above appropriate unit for the purposes of collective-bargaining with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act.

5. By refusing on and since May 26, 1981, to bargain with the Union as the exclusive representative of the employees in the above-described appropriate unit, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By interrogating employees concerning their union activities and desires; by threatening employees with plant closure if the Union successfully organized Respondent's terminal; by threatening employees with discharge because they engaged in union activities; and by interfering with Board proceedings by impeding the Board in the exercise of its power to compel attendance of a witness in its proceedings, Respondent has violated Section 8(a)(1) of the Act.

7. By discharging employees Russell Hawkins and William Putnam, Respondent has not violated Section 8(a)(1) and (3) of the Act as alleged.

8. Respondent has not violated the Act in any other manner.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[35]

The Respondent, Travelways, Inc., Greensville, South Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with General Drivers, Warehousemen and Helpers Local Union 28, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its designated agents as the exclusive representative of its employees in the following appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment:

> All bus drivers, maintenance employees, mechanics, and clericals employees employed at Respondent's Greenville, South Carolina, terminal excluding all other employees, including guards, professional employees, and supervisors as defined in the Act.

(b) Upon request, bargain collectively in good faith with the above-named labor organization and its designated agents as the exclusive representative of its employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody same in a written signed agreement.

(c) Engaging in any of the following conduct in connection with the employees' engagement in union or concerted activities: interrogating employees, threatening employees with plant closure, threatening employees with discharge or interfering with the Board's proceedings by impeding the Board in the exercise of its power to compel the attendance of a witness in its proceedings.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively in good faith with the above-named labor organization and its designated agents as the exclusive representative of its employees in the appropriate unit with respect to wages, rates of pay, hours of employment, other terms and conditions of employment, and, if an understanding is reached, embody same in a written signed agreement.

(b) Post at its place of business in Greenville, South Carolina, copies of the attached notice marked "Appendix."[36] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed with respect to the allegations that Respondent unlawfully discharged its employees Russell Hawkins and William Putnam.

[35] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[36] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to recognize and bargain collectively with General Drivers, Warehousemen and Helpers Local Union 28, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its designated agents as the exclusive bargaining representative of employees in the following appropriate unit with respect to wage, rates of pay, hours of employment, and other terms and conditions of employment.

> All bus drivers, maintenance employees, mechanics, and clericals employees employed at our Greenville, South Carolina, terminal excluding all

other employees, including guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT threaten our employees with discharge or plant closure because they engage in union activities.

WE WILL NOT interfere with the National Labor Relations Board proceedings by impeding the Board in the exercise of its power to compel the attendance of a witness in its proceedings.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL, upon request, bargain collectively with the above-named Union and its designated agents as the exclusive representative of our employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody same in a written signed agreement.

TRAVELWAYS, INC.